

AGENDA ITEM #16

July 26, 2005

Briefing

M E M O R A N D U M

July 22, 2005

TO: County Council

FROM: *MLM* Marlene L. Michaelson, Senior Legislative Analyst
MF Michael Faden, Senior Legislative Attorney

SUBJECT: Briefing on the Status of Building Permit and Site Plan Review

The Planning Board and Department of Permitting Services will brief the Council on the status of building permit and site plan review. Attached on © 1-2 is a memorandum from the Council President listing the questions he has asked each agency to address at the briefing. Any written responses prepared by the agencies will be circulated as soon as it becomes available.

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MONTGOMERY COUNTY COUNCIL
ROCKVILLE, MARYLAND

OFFICE OF THE COUNCIL PRESIDENT

MEMORANDUM

July 21, 2005

TO: Councilmembers

FROM: Thomas E. Perez, Council President 

SUBJECT: July 26 Briefing by the Planning Board and DPS

The Planning Board and Department of Permitting Services are scheduled to brief the Council at 11:20 a.m. on July 26, before the public hearing is held later in the afternoon on Bill 22-05, on the status of their development review processes in light of the problems in Clarksburg that have been brought to our attention. Based on the many questions raised so far by Councilmembers, I am concerned that this briefing could easily take the entire day if we do not precisely define what we want to cover.

I recognize that everyone wants to know exactly what happened in Clarksburg and why, and whether similar violations of approved plans are common in other developments already built or under construction elsewhere in the County. Previous events can be reviewed in detail after the Council receives the OLO report to us and the assessment being prepared by the Planning Board and DPS of building permit conformance with site plans approved in the last two years. Now we are concerned that extensive additional violations must not be allowed to occur before OLO and others complete their studies and any recommended changes to the development process are implemented.

On July 26 we should focus on both agencies' current strategies to deal with pending developments. The purpose of this briefing is to learn in greater detail precisely what steps the Planning Board and DPS are taking to ensure that there are no additional violations taking place in Clarksburg and elsewhere. This will give us necessary background information to consider the pending bill restricting the issuance of residential building permits and the more limited administrative building permit review that the County Executive and Planning Board Chair announced on July 18, without attempting to cover all the broader issues that we will begin to address in a few weeks.

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The questions I have asked the two agencies to address on July 26 are:

1. What steps are you currently taking during the review of building permits to assure that zoning development standards are being checked before a building permit is issued?
2. How many pending or approved building permits, site plans, and site plan amendments are affected by actions you have already taken? (Provide a map or indicate locations if possible.) How many are residential and how many are commercial buildings? How many additional residential projects would be affected by Bill 22-05? Can you estimate how long the process required by Bill 22-05 would delay a typical building permit, or if that is not possible what range of time delays are likely?
3. We would like an initial status report on the Planning Board's and DPS' two-year review of site plans and building permits. Has this review begun? How will it be conducted? How many staff are working on it? How many site plans are affected? How many have you inspected, and what are the results of your initial inspections? How long do you think this review will take? What difficulties do you foresee in completing this review? What if any actions will result from any deviations from approved plans that you find during this review?
4. What staffing changes are necessary for each agency to assure proper review of building permits for conformance with approved development plans? Do you intend to reassign or bring in part-time staff to address this current crisis? Given what you know about the extent of the problem today, do you see a need for an increase in permanent staff as well? If more permanent staff are needed, what is the estimated impact on relevant permitting and development fees?

We will have ample time in September and beyond to address the critical questions of what went wrong, why, and how we fix the problems and restore public confidence in the integrity of the development review and implementation process.

Clarksburg:

**Primary problems
What's being done
Key numbers and figures**

July 26, 2005

The Montgomery County Council Briefing

The Department of Permitting Services

The Maryland-National Capital Park and Planning Commission

What happened?

Primary Problems Identified:

- 1. Developers violated the site plan signature set approved by the Planning Board by seeking permits for and constructing numerous residential structures too tall and too close to streets.**
 - 2. Flaws were discovered in the building permit review process preventing the Department of Permitting Services and Park and Planning from detecting the developer violations.**
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What's been done about it?

Action Item:

Order an outside, independent, top-to-bottom review of Montgomery County's entire development approval process to identify areas that need improvement, clarity and streamlining.

Responsible Agency:

Park and Planning
Department of Permitting Service

Action Taken:

On June 30, Montgomery County Planning Board Chairman Derick Berlage made the announcement and a request for proposals is underway.

What's been done about it?

Action Item:

Place an immediate freeze on 199 pending building permits (and any new building permits) in site plan zones.

Responsible Agency:

The Department of Permitting Services
Park and Planning

Action Taken:

On July 18, County Executive Duncan made this announcement.

What's been done about it?

Action Item:

Revise building permit application to require Maryland licensed engineering professionals to certify compliance with approved site plans.

Responsible Agency:

The Department of Permitting Services

Action Taken:

The Department of Permitting Services has notified developers of this new requirement. Developers must resubmit all pending building permit applications.

What's been done about it?

Action Item:

Clarify the roles the agencies will play in ensuring developers adhere to building height restrictions.

Responsible Agency:

Park and Planning
The Department of Permitting Services

Action Taken:

The Park and Planning Commission will begin reviewing height at the building permit stage using information on revised application forms. The Department of Permitting Services will continue to inspect buildings under construction for conformance with approved plans.

What's been done about it?

Action Item:

Clarify the roles the agencies will play in reviewing setback information provided by developers and engineers.

Responsible Agency:

Park and Planning
The Department of Permitting Services

Action Taken:

Park and Planning will continue to review setback information at the building permit stage. The revised building application forms will allow this information to be double-checked. The Department of Permitting Service will continue to check setbacks for buildings under construction.

What's been done about it?

Action Item:

Limit who can approve administrative amendments to site plans.

Responsible Agency:

Park and Planning

Action Taken:

As of June 3, Park and Planning Director Charlie Loehr sent a memo to staff announcing only he would be permitted to approve administrative amendments to site plans. Enhanced written documentation is now required as part of the justification for administrative site plan amendments.

What's been done about it?

Action Item:

Request approval from Montgomery County Council for additional staff.

Responsible Agency:

Park and Planning
The Department of Permitting Services

Action Taken:

Decision makers from both agencies have jointly crafted an enhanced staffing plan that has been submitted to the Council for immediate consideration.

What's been done about it?

Action Item:

Ensure consistency of project plans, preliminary plans, site plans and signature set documents.

Responsible Agency:

Park and Planning

Action Taken:

Staff will provide in depth and lengthier reviews of all documents submitted by developers. This will require additional staff or result in a longer approval process.

What's been done about it?

Action Item:

Request that the Office of Legislative Oversight conduct a full review of the development underway in Clarksburg Town Center.

Responsible Agency:

The Montgomery County Council

Action Taken:

Office of Legislative Services has already started their inquiry. Results are expected in mid-September.

What's been done about it?

Action Item:

Determine whether any criminal wrongdoing occurred.

Responsible Agency:

The Montgomery Inspector General
The Maryland State Prosecutor

Action Taken:

Both offices have begun to review information. At this time, Park and Planning has no evidence of criminal activity.

Key numbers and figures

County Executive Doug Duncan's July 18th announcement put an immediate freeze on 199 commercial and residential building permits pending approval at the Department of Permitting Service until height and setback information can be verified.

129 commercial properties
70 residential properties*

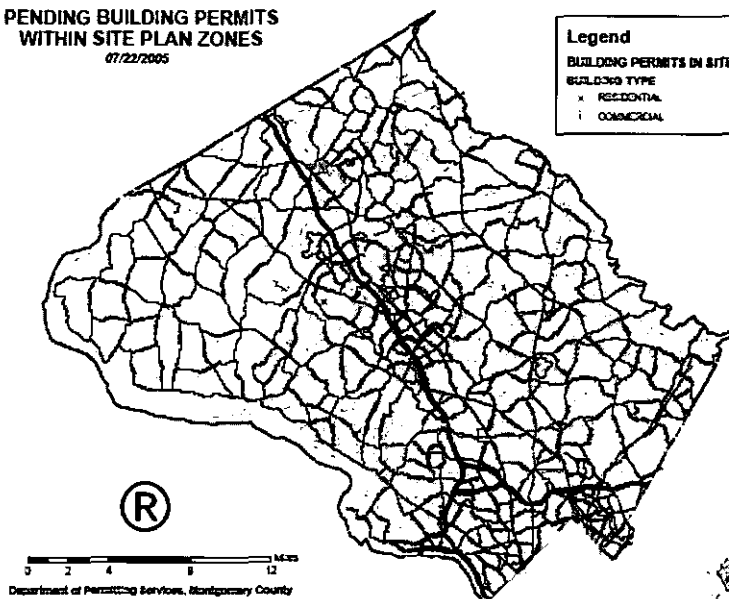
199 total pending permits

*33 residential units located in Clarksburg

Areas affected by the freeze

PENDING BUILDING PERMITS
WITHIN SITE PLAN ZONES
07/22/2005

Legend
BUILDING PERMITS IN SITES
BUILDING TYPE
x RESIDENTIAL
i COMMERCIAL



Two-year review

Action Item:

Review conformance of all construction subject to site plans approved in the last two years.

Responsible Agency:

Park and Planning
Department of Permitting Services

Action Taken:

There are 270 building permits in this category. Where construction has not yet begun, permit applications will be checked for compliance with site plans. All active construction sites will be physically inspected by mid-September. **Any violations will be referred to the Planning Board for action.**

Additional staffing needs

Department of Permitting Service

2 building permit reviewers
6 field inspectors

Park and Planning

1 compliance officer (quality control)
2 inspectors
2 document reviewers
1 building permit reviewer
2 technology positions (place all development applications on website)
1 attorney (or paralegal)

Conclusion

Both the Department of Permitting Services and Park and Planning have taken the deficiencies in the Clarksburg review process very seriously.

Both agencies have collaborated to proactively change internal and external processes to prevent future violations and determine any prior violations.

Numerous administrative changes are already in place and others will be in place within weeks.

The County Council can best support the effort by providing for additional staff resources and carefully reviewing the findings and recommendations in the report from the Office of Legislative Oversight.

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